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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,556	10/19/2001 William Ernest Po		29342/36206A	6526
4743	7590 09/17/2003			
	L, GERSTEIN & BORU	EXAMINER		
6300 SEARS 233 S. WACK	KER DRIVE		COOK, REBECCA	
CHICAGO, II	L 00000		ART UNIT	PAPER NUMBER
			1614	110
	· ·		DATE MAILED: 09/17/2003	i p

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary Total MAILING DATE of this communication appears on the cover sheet with the correspondence address			Application No.	Applicant(s)					
## Disposition of Claims ## Art Unit Rebecca Cook 1614	•								
Rebecca Cook 1614		Office Action Summary							
The MAILING DATE of this communication appears on the cover sheet with the correspondence address — Period for Repty A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Lethissive of term may be available and the thin yolion of 3 CFR 1.138(a). In a event, however, may a noty be timely field Life period for may be specified above is less than thiny (30) says, a reply within the statutory minimum of thinty (30) slays will be considered sinely. If the period for reply a specified above is less than thiny (30) says, a reply within the statutory minimum of thinty (30) slays will be considered sinely. If the period for reply a specified once, the marring date of this communication. Falsate to reply which his less for extended priod for reply with by statutory period vall again and the control period (30) slays will be considered sinely. If the period for reply specified and the communication of the communication to the communication of the communication of the communication to sever a flowly field. The communication is considered the communication to sever a flowly field. The communication is closed in accordance with the practice under Ex parte Queryle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Queryle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 11-17 and 20-23 is/are perioding in the application. 4) Claim(s) 11-17 and 20-23 is/are rejected. 7) Claim(s) is/are allowed. 6) Claim(s) is/are as objected to by the Examiner. Application Papers 9) The specification is objected to by the Examiner. Application Papers 9) The proposed drawing correction filed on is/are in a paper veed by disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action. 12) The oath or declaration is objected to by the Examiner. If		•							
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Exhancised crims may be available under the provisions of 37 CPR 1.136(a). In no event, however, may a reply be timely filed If the paned for reply seporities dove is late than thinky (30) days, a negly which the statutory premiser and the mention glate of this communication for reply seporities dove, the meaning statutory premiser abustype and ellipse (30) ellipse of 18 (a) (40) CPR 18 (a) CPR 18		- The MAILING DATE of this communication app							
THE MAILING DATE OF THIS COMMUNICATION. Extensions of time map by a validable undor the provisions of 37 CR 1.136(a). In no event, however, may a reply be limitly filled after SIX (6) MCNTIST from the mailing date of this communication. If the period to map by a validable undor the provisions of 37 CR 1.136(a). In no event, however, may a reply be limitly filled after SIX (6) MCNTIST from the mailing date of this communication. If the period to map by a validable undo the mailing date of this communication. Provisions of the period of the state that there mediately an expension of the period with the mailing date of this communication, even if the mailing date of this communication. Provisions of the mailing date of this communication, even if the mailing date of this communication. Failure to reply within the set or extended period to reply will by datable, cause the application to become ABANDONED (38 U.S.C. § 133). Any reply received by the Official test than three mediating date of this communication, even if threely fleed, may reduce any communication and provided them deliquidated to the mailing date of this communication. Status 1)② Responsive to communication(s) filled on <u>09 September 2003</u> . 2a) This action is FINAL. 2b)② This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quay/e, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4)② Claim(s)	Period fo	· ·							
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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 9, 2003 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 11-17, 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over 6,140,329 (Daugan) for the reasons given in Paper No. 5. Daugan (col. 1, compound (I), col. 3, lines 48-65, col. 5, lines 60-65,col. 7, Ex. 1, Compound A, claims 16-17) disclose the instant compound and a method of using it to treat sexual dysfunction. It further discloses oral administration and a dosage within the recited range.

Applicants continue to argue that the instant compound has reduced side effects when compared with Viagra. This is not persuasive, since the two compounds are structurally different.

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Applicants continue to argue that Daugan fails to suggest the instant low dose, since the examples are to 50 mg. This is not persuasive. Daugan discloses (column 3, lines 50-52) a dose ranging from 0.5-800 mg, which includes the instant 1-20 mg. In the absence of a showing of unexpected results comparing the disclosed 50 mg dose of Daugan with upper dosage range of 20 mg of instant claim 13 no unobviousness is seen in the dosage range of the instant claims.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 11-17, 20-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim1-7 of U.S. Patent No. 6,451,807. Although the conflicting claims are not identical, they are not patentably distinct from each other because the comprising language of the instant claims would include treating sexual dysfunction in a patient suffering from a retinal disease or the heart conditions recited in claim 4 of '807. Furthermore, claim 7 of '807 teaches the compound of the instant method.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Cook whose telephone number is (703) 308-4724. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel, can be reached on (703) 308-4725. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

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